



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2019

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman DeFazio:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated July 29, 2019, to Administrator Andrew Wheeler, in which you sought information about the current rulemaking addressing the management and treatment of peak flows at publicly owned treatment works (POTWs) serving separate sanitary sewer systems.

In April 2018, the Agency announced a new rulemaking effort aimed at clarifying issues associated with the management and treatment of peak flows during wet weather events at POTWs with separate sanitary sewer systems. In this rulemaking, the EPA will be considering changes to the National Pollutant Discharge Elimination System (NPDES) regulations to establish a permitting framework for evaluating management options to provide POTWs serving separate sanitary sewer systems flexibility in how they manage and treat peak flows. The EPA has not yet issued a proposal, but any proposed changes would seek to provide a consistent national approach to permitting peak flows that ensures all applicable permit discharge limitations and requirements are met during peak flow events. At the same time, such an approach should allow for both efficient treatment plant operation and protection of the public from potential adverse health effects of inadequately treated wastewater.

The Agency recognizes the significant expertise that exists among states, tribes, POTWs and municipal officials, private sector engineering firms, public health agencies, and the public related to these issues. The EPA has undertaken an extensive stakeholder engagement effort to encourage individual input for developing a draft rule that will support a consistent approach to permitting, allow for innovative flexibility, and protect human health and the environment.

In advance of issuing any proposed changes, the EPA solicited public comment from August 31, 2018 to October 31, 2018 and held public listening sessions on October 16, October 24, and October 30, 2018. The EPA will continue to consider all these perspectives when developing a proposed rule to address permitting requirements for the management of peak flows at POTWs with separate sanitary sewer systems. Enclosed is a spreadsheet listing the organizations and

stakeholders with whom EPA staff have discussed this rulemaking effort. The EPA expects to release a notice of proposed rulemaking and request for public comment by November 2019 and to take final action on the proposal by July 2020. The docket, accompanying the proposed rulemaking, will contain the information underpinning the Agency's proposed action and will be available for viewing on [regulations.gov](https://www.regulations.gov).

The EPA does not possess data on the total number of facilities that blend or use side-stream treatment, frequency of blending, or volume of blended effluent discharged for the national universe of POTWs. The EPA has limited data on the cost and treatment effectiveness for any installed side-stream technologies as well as pathogen levels in blended wastewater discharges to compare to discharges of wastewater that has received full biological treatment.

Regarding the number of POTWs whose NPDES permits include acute (short-term) limits on pathogens, the EPA used final effluent Discharge Monitoring Report (DMR) data to identify limits for pathogens and pathogen indicators in 6,597 NPDES permits for POTWs serving separate sanitary sewer systems. DMRs do not identify effluent limits as short- or long-term or acute or chronic. Rather, the limits are categorized based on whether they represent a maximum (e.g., daily maximum, instantaneous maximum) or average (e.g., weekly average, annual average, monthly average) condition. The EPA found that 3,492 permits contained year-round maximum limits and 5,380 contained year-round average limits; 431 permits contained seasonal maximum limits and 560 contained seasonal average limits.

The EPA analyzed the POTWs serving separate sanitary sewer systems that discharge into a coastal recreation water or discharge up to 5 miles upstream of a coastal recreation water (as defined in Section 502 of the Clean Water Act) that had a beach advisory or closing at least once in 2018. There were 51 POTWs that discharge into or up to 5 miles upstream of a coastal recreation water that had a beach advisory or closing at 56 beaches at least once in 2018. The EPA analyzed the number and location of POTWs serving separate sanitary sewer systems located in low-income or minority communities with one or more effluent exceedances in 2018 of at least one existing NPDES permit limit. Of the 4,082 POTWs that exceed one or more permit limits in 2018, 945 were located in either low-income or minority communities.

The Committee's request is related to an ongoing regulatory action. Given its current status, we are particularly concerned about protecting the integrity of ongoing Agency pre-decisional deliberations. Some of the documents you seek may well reflect internal advice, recommendations, and analysis by Agency staff and attorneys about the proposed rule. These internal and pre-decisional deliberations are likely to be the subject of additional discussions and analysis among Agency staff and senior policymakers during development of this proposal and subsequent finalization of any regulatory action. It is critical for Agency policymakers to obtain the broadest range of advice and recommendations from Agency staff in order to properly fill its statutory obligations under the Clean Water Act and other environmental statutes. Disclosure of pre-decisional information at this stage of the deliberations could raise questions about whether the Agency's decisions are being made or influenced by proceedings in a legislative or public forum rather than through the established administrative process, which is ongoing. In addition, disclosure of such information could compromise the ability of Agency employees to provide candid advice and recommendations during the Agency's ongoing deliberative process and may

make the rulemaking process, as a whole, less robust, potentially impacting the Agency's mission.

The EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests. If you have further questions, you may contact me, or your staff may contact Duncan Braid in the EPA's Office of Congressional and Intergovernmental Relations at Braid.Duncan@epa.gov or (202) 564-7067.

Sincerely,



Joseph A. Brazauskas
Acting Associate Administrator

Enclosure

cc: The Honorable Sam Graves, Ranking Member